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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
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)

Rulemaking to Amend Parts 1, 2, 21 and 25)
of the Commission's Rules to Redesignate)
the 27.5-29.5 GHz Frequency Band, to)
Reallocate the 29.5-30.0 GHz Frequency Band,)
to Establish Rules and Policies for Local)
Multipoint Distribution Service and for)
Fixed Satellite Services)

CC Docket No. 92-297

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REPLY COMMENTS OF HUGHES COMMUNICATIONS GALAXY, INC.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Hughes Communications Galaxy, Inc. ("Hughes") hereby replies to the comments submitted in response to the Fourth Notice of Proposed Rulemaking in this proceeding with respect to the Commission's proposal to accommodate, at 31.0-31.3 GHz, certain LMDS requirements that could not be accommodated in the 27.5-30.0 GHz band.

As evidenced by the comments filed in this proceeding, the Commission's 31 GHz proposal has broad support from a wide range of companies, including LMDS operators and LMDS equipment manufacturers. In particular, many commenting parties recognize that the proposal to designate the 31 GHz band for LMDS, establish appropriate licensing rules, and license LMDS there on a primary basis, is fully consistent with the existing allocation of this band to the fixed and mobile services.

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Pursuant to existing service rules, some licenses have been issued in part of this band, but those licensees operate on a strict secondary, non-interference basis.¹ Accordingly, those licensees have been on adequate notice that this band may be needed for other services in the future, and have no legitimate expectation that their existing operations will be protected from the use of the band for LMDS.

A few incumbent, secondary users of the 31.0-31.3 GHz band have questioned the Commission's proposal to accommodate LMDS in this band on a primary basis, arguing that use of this band by LMDS will improperly affect their ability to use this segment of spectrum on an ongoing basis.² All of these arguments rest on the same fundamental misapprehension. These parties have lost sight of the fact that they are, and clearly always have been, licensed as secondary services operating at sufferance to other services authorized in the band.³ Over a decade ago, when these secondary services first were authorized, the Commission was crystal clear that these licensees cannot be heard to object to harmful interference being caused by any other licensed operation in this band. The Commission stated, "[i]f an entity does not feel that its operations can exist in an environment where there is a potential for harmful interference, then it

¹ Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297 at 39 (released July 22, 1996).

² See Comments of the City of San Diego; Comments of the City and County of Honolulu; Comments of the City of Topeka; Comments of Mobile Source Air Pollution Reduction Review Committee; Comments of Sunnyvale GDI, Inc., Comments of Sierra Digital Communications, Inc.

³ See 47 C.F.R. §§ 21.701(k), 74.602(h), 78.18(a)(5), 94.65(n) and 95.1(b).

should operate in other bands where protection is provided.”⁴ Thus, the 31 GHz proposal does not, as one commentator suggests, “alter the legal standing of the entities that utilize this band for signal synchronization purposes.”⁵ Rather, the Commission’s proposal merely preserves and restates the current regulatory construct where those existing licenses are clearly secondary.⁶

It is important to note that the Commission has not suggested the removal of incumbent services from the 31 GHz band, as one party mistakenly suggests.⁷ Rather, existing secondary operators will be permitted to continue to operate on a non-interference basis. At this time, it is even premature to assume that there will be an interference problem as a result of use of the 31 GHz band by LMDS providers. At least one commentator has suggested that there might be ways for existing secondary services to coexist with LMDS.⁸ However, in the event that such coordination is not possible, the Commission should not lose sight of the fact that these existing operators undertook their operations with full notice of their status as secondary service providers and the potential for future interference.

⁴ Establishment of a Spectrum Utilization Policy for the Field and Mobile Services’ use of Certain Bands Between 747 MHz and 4 GHz, 57 RR 2d 1162, 1164 at ¶ 10 (released Feb. 8, 1985) (P & F).

⁵ Comments of Mobile Source Air Pollution Reduction Review Committee at 2.

⁶ One commentator goes on to make the unusual suggestion that the Commission, pursuant to 47 C.F.R. 1.1307(c), is required to issue an environmental impact statement as a result of its proposed band plan in this proceeding. See Comments of Sunnyvale GDI, Inc. at 7. Such an assertion reveals a significant misunderstanding of the Commission’s policy with regard to this band. The Commission is taking no action to modify or replace its policy with regard to secondary users in the 31.0-31.3 GHz band, and as such no environmental impact statement is required.

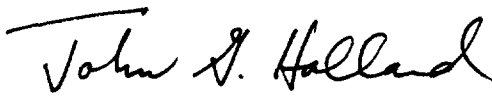
⁷ See Comments of Sierra Digital Communications Inc. at 8.

⁸ See Comments of CellularVision USA, Inc. at 11.

The 31 GHz proposal is a reasonable solution to the frequency constraints in the 27.5-30.0 GHz band, and is an appropriate complement to the band plan solution presented in the First Report and Order. Thus, Hughes urges the Commission to dismiss the arguments raised by existing, secondary users in this band and adopt its proposed reallocation of the 31.0-31.3 GHz band for LMDS, as outlined in Fourth Further Notice of Proposed Rulemaking in this proceeding.

Respectfully submitted,

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